IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 15/2004

1. Shri Narcinva S.V. Sinai Velingkar,

2. Shri Ramakant V. S. Velingkar

3. Shri Atchut V.S. Velingkar,

4. Smt. Gomatibai Velingkar,
All residents of Aquem,
Margao, Goa.
(since deceased represented by:
her legal heirs)

4a. Mr. Jayant Venctexa Poi Bhale,
major of age, businessman and his wife,

4b. Mrs. Kishore Jaiant Poi Bhale,
both residents of E2 Adarsh
Co-op. Society,
Caranzalem, Ilhas, Goa – 403 002.

4c. Dr. Gurudas Poi Bhale alias Gurudas,
Ventctesh Poi Bhale,
Medical Practitioner and his wife

4d. Alka Gurudas Poi Bhale,
both residents at Shubham,
Faliero Bagh, Mungul Grande,
Margao, Goa 403 801,

4e. Dr. Satishchandra Venktexa Poi
Bhale alias Satishchandra Venctesh
Poi Bhale, Medical Practitioner,
and his wife;

4f. Mrs. Sulaksha Satishchandra Poi
Bhale, both residents at
Amar Pali, Atmaram Borkar Road,
Panaji, Goa 403 001.

4g. Miss Sandya Venctexa Poi Bhale,
daughter of late Venctexa Poi Bhale,

housewife, unmarried,
resident of E2, Adarsh Co-operative
Society, Caranzalem, Goa 403 002. ..... Petitioners.

V/s.

1. The Land acquisition Officer,
Dy. Collector, Collector,
Office, South-Goa, Margao,

2. Govt. of Goa,
Through Secretary Tourism,
Secretariat, Panaji-Goa.

3. The Director of Tourism,
Directorate of Tourism,
Govt. of Goa, Patto, Panaji, Goa. ..... Respondents.

Mr. M. S. Usgaonkar, Senior Advocate with Mr. I. Agha, Advocate for the petitioners.

Mr. S. R. Rivonkar, Govt. Advocate for the respondents.

CORAM : P.V. KAKDE, J.

Date of reserving the Judgment :
18/08/2006.

Date of pronouncing Judgment :
21/08/2006

J U D G M E N T :

Heard both sides. Perused the record.

2. The petition arises from Order dated 31.10.2003, passed by the District Court, Margao to the extent it disallowed the claim of the petitioners as to solatium on severance and interest on solatium on

severance.

3. The District Judge by his Award dated 28.11.1988 had granted solatium and interest on solatium on severance and the same was not subject-matter of any challenge and the Award passed in that regard in the year, 1988 became final. The execution proceeding was filed in the year 1997 wherein the executing Court was of the view that the petitioners were not entitled for solatium on severance as per Award dated 28.11.1988 and, as such, rejected that component of the Award and consequently, the parties were directed to submit fresh calculations in terms of the said order.

4. It was submitted on behalf of the petitioners that the order passed by the executing Court holding that the petitioners were not entitled to solatium on severance under Section 23(1)(iii) of the Land Acquisition Act and were not entitled to interest on such solatium on severance despite the fact that the solatium on severance and interest on solatium on severance was granted by the District Court by its Order dated 28.11.1988, the said Award had become final. That part of the Award was not subject to any challenge and the challenge before the High Court was limited to Section 23(1-A) of the Land Acquisition Act which was allowed by the High Court and, therefore, there was finality to the Judgment and hence, the revision application is maintainable in terms of Section 53 of the Land Acquisition Act

because it did not arise from any interim order.

It was submitted on behalf of the respondents that it is basic principle of law that nothing can be granted or awarded which is beyond statutory limits and is not legally due and, therefore, on this ground alone, the petition was sought to be dismissed with costs.

5. Apart from any other aspects involved in this matter, in my considered view, the error apparent from the record in the impugned order is to the effect that the 1988 Award had, admittedly, attained finality. Inspite of the fact that the challenge to that award was limited to the extent of Section 23(1-A) of the Act and the impugned component under Section 23(1)(iii) of the said Act having not been challenged, the same has become final. Therefore, by necessary implication a right accrued in favour of petitioners to seek amount under the said component by virtue of the said Award. It is needless to mention that the executing Court cannot go behind the decree. Moreover, if at all the State wanted to challenge the impugned component contemplated under Section 23(1)(iii) of the said Act, it had in fact opportunity when the challenge was made which was limited to Section 23(1)(iii) of the said Act. In view of this position, I am of the view that though it is correct that nothing could be awarded which was not legally due, still, the right accrued in favour of the petitioners to seek the said amount of solatium on severance and interest on solatium on severance under Section 23(1)(iii) of the said

Act cannot be taken away, especially when it is seen that the respondent-State was very well aware of the Award passed in the year 1988 and inspite of this aspect it did not challenge the same. Therefore, I hold that the petition deserves to be allowed.

6. In the result, Rule is made absolute. The revision petition is allowed in terms of prayer clauses (a), (b) and (c) and disposed of with no order as to costs.

P.V. KAKADE, J.

ssm.